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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,070	10/06/2003	Keith E. Myers	816020-100046-US	9949

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EXAMINER

MILLER, CHERYL L

ART UNIT PAPER NUMBER

3738

DATE MAILED: 04/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/680,070

Applicant(s)

MYERS ET AL.

Examiner

Cheryl Miller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2005 and 04 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-13 is/are pending in the application.
- 4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-7 and 9-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

The applicant's election of species 5, drawn toward figures 15-21 has been acknowledged. The applicant noted that claims 1-13 read on species 5, however the examiner disagrees. Claim 8 seemingly belongs to a different species (species 7) and has been withdrawn from examination.

### ***Claim Objections***

Claims 3-7 and 9-13 are objected to because of the following informalities: the claims have improper dependencies. Claims 54-63 do not exist. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4, 5, 11, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitation "the sinus commissural posts" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the inflow and outflow ends" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "the outflow end" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 13 recites the limitation "the sinus commissural posts" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-5, 7, 9, 10, and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Thorpe et al. (US 2004/0193253 A1). Thorpe discloses a valve assembly (fig.2, 15) comprising a replacement valve (leaflets 30, 34, 300, 340) and a collapsible and expandable anchoring structure (wire frame, [0026]) having a plurality of elliptical segments (one elliptical segment may be considered to be either 24+21, 24+22, or 24 alone and similarly 140+150, 140+160, or 140 alone; since a segment is being interpreted as being fragment, portion or part of, therefore only a fragment, portion of part of an ellipse is required by the claim) joined side by side to form junctures. Thorpe discloses the anchoring structure to have flared ends (fig.2, 15) and to be made of an elastic material (self-expanding, [0026]). Thorpe discloses the anchoring structure to be made of one piece of tubing [0028]. Thorpe discloses a plurality of support posts (180).

Claims 1, 3-7, and 10-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Marquez et al. (US 6,736,845 B2). Marquez discloses a valve assembly comprising a

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replacement valve (leaflets 42) and a collapsible and expandable anchoring structure (stent 70) having a plurality of elliptical segments (74; since a segment is being interpreted as being fragment, portion or part of, therefore only a fragment, portion of part of an ellipse is required by the claim; Marquez has shown the cusps 76 of stent 70 to be elliptical segments) joined side by side to form junctures (see figs). Marquez discloses the anchoring structure (70) to have flared ends (col.9, lines 42-49; fig.4b, 14b, 16b) and to be made of an elastic material (col.8, lines 60-66). Marquez discloses a plurality of support posts (90, 44, 264, 296, 308, 324+326+328, 606), which have axial slots (606 has a slot seen in fig.42; 90 has a slot seen in fig.5; 264 has a slot seen in fig.19; and 324 and 328 have slots seen in fig.21), or bores (606 has bores seen in fig.42). Marquez discloses the elliptical segments to be joined by a double crimp (324+326+328 forms a double crimp, crimping at two location, at 324 and 328).

Claims 1, 3-5, 7, 9, 10, 12, and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Lobbi (US 2004/0186563 A1). Lobbi discloses a valve assembly comprising a replacement valve (leaflets 52) and a collapsible and expandable anchoring structure (stent 50) having a plurality of elliptical segments (42+76; 76+40; 40 alone, 74 alone; since a segment is being interpreted as being fragment, portion or part of, therefore only a fragment, portion of part of an ellipse is required by the claim; either way, Lobbi has shown generally elliptical shapes joined side by side) joined side by side to form junctures (94). Lobbi discloses the anchoring structure to have flared ends (fig.5) and to be made of an elastic material [0072]. Lobbi discloses the anchoring structure to be made of a single piece of tubing (see figs). Lobbi discloses a plurality of support posts (94 or 106), which have bores (106 has bores 108; fig.8, 10).

***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Miller whose telephone number is (571) 272-4755. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4755. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Cheryl Miller



BRUCE SNOW  
PRIMARY EXAMINER